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August 29, 2008

Kerry N. Weems
Acting Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
7500 Security Boulevard
Baltimore, Maryland 21244-1850

Dear Mr. Weems:

The Healthcare Information and Management Systems Society (HIMSS) is pleased to submit our comments regarding the CMS' Proposed Rule "Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2009" (**CMS Reference Number: CMS-1403-P posted in July 2007**). For the purposes of the response, HIMSS will be limiting our comments to the section on Computer-Generated Fax Transmissions, located on page 38539 of the Rule.

HIMSS is the healthcare industry's membership organization exclusively focused on providing leadership for the optimal use of healthcare information technology and management systems for the betterment of healthcare. HIMSS represents more than 20,000 individual, 350 corporate members, and 47 chapters nationwide. HIMSS seeks to shape healthcare public policy and industry practices through its educational, professional development, and advocacy initiatives designed to promote information and management systems' contribution to quality patient care.

As an organization, we are committed to supporting the development and distribution of information and management systems, across the healthcare continuum, to achieve greater patient safety, improved office efficiency, better quality of care, and cost effective care delivery. E-Prescribing and the adoption of Electronic Health Records foster an environment where these improvements can be maximized.

As a strong supporter of improvements in patient safety, the quality of healthcare delivery, and the cost savings indicated through electronic prescribing HIMSS and our members remain committed to supporting measures to ensure E-Prescribing is successful. As we indicated in [our comments in August 2007](#), our concerns over the elimination of the fax exemption for E-Prescribing are as follows:

- **Implement all required changes for E-Prescribing on a schedule under one final rule:** HIMSS members are concerned that providers and pharmacies will be confused by the elimination of the exemption for computer-generated facsimiles just months prior to the overarching changes to E-Prescribing requirements from the Medicare Modernization Act of 2003 that must be promulgated by April 2009.

- **HIMSS recommends a consolidated rule that adheres to the April 2009 deadline, allowing time for implementation and testing to occur:** When the timeline is complete, HIMSS members suggest CMS consider an implementation period of 6-12 months before the exemption is eliminated.

CMS has made it clear that E-Prescribing is not mandated yet for prescribers and pharmacies. There is inherent confusion within this premise, given that there are two constituencies to meet E- Prescribing requirements to make true E- Prescribing a reality. Secondly, incentives to evolve E- Prescribing are misaligned, given there are two constituencies.

- a. A pharmacy that is not E- Prescribing enabled may, by default, force a prescriber to be non-compliant since a prescriber's only options are to conduct E- Prescribing in a manner that is not aligned with CMS' definition of E- Prescribing
- b. The effort to convert from fax to electronic is easier than the effort to install the prescription entry system.
 - 1. Prescribers with existing E- Prescribing capability will convert to NCPDP transactions more quickly and do not need to be singled out.
 - 2. Conversion by pharmacies to be enabled to receive true digital prescriptions, i.e., an E- Prescribing tool utilizing and taking advantage of the full functionality of an E- Prescribing software program (in contrast to "electronic", which could be manual fax or fax sent automatically by an E- Prescribing system) will take more time and resources.
 - 3. Rather than penalizing the early adopters of E- Prescribing, i.e., those with existing E- Prescribing capability, the focus should be on those that are still hand writing their prescriptions.

Finally, we ask CMS to consider the following:

- Clarify the definition of a "true" E- Prescribing system that is subject to the computer-generated fax exemption termination as one that enables NCPDP Script transactions
- Alleviate confusion over the various definitions of E- Prescribing, and the workarounds that have evolved in the industry to date, by re-labeling the term "electronic" prescribing to "digital" prescribing. HIMSS is willing to take on this effort if deemed appropriate by CMS.
- Clarify that providers who use prescription writing systems without NCPDP Script transactions are not subject to the provisions of the computer-generated fax exemption termination because they are not using "true" electronic prescribing systems

Thank you for consideration of these comments which represent the input from membership.

Sincerely,



H. Stephen Lieber, CAE
President and CEO